

JAN 24 2013

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**A BILL FOR AN ACT**

RELATING TO PROCUREMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The convenience of modern society has provided  
2 people with a variety of inexpensive food choices but it has  
3 eliminated our connection to and understanding of where food  
4 comes from, resulting in less healthful eating and a distancing  
5 from natural food sources.

6           A report made to the twenty-sixth legislature in response  
7 to Senate Concurrent Resolution No. 121, S.D. 1, H.D. 1, regular  
8 session of 2009, through the collaboration of private, public,  
9 and nonprofit entities, pointed to the problems of food  
10 insecurity and growing obesity rates that the State of Hawaii is  
11 facing. One in every three children born in the year 2000 is  
12 expected to develop diabetes and the 2003 food security task  
13 force report found that over nineteen per cent of Hawaii  
14 residents live in food insecure households. Food insecurity is  
15 defined in that report as "whenever the availability of  
16 nutritionally adequate and safe foods or the ability to acquire  
17 acceptable foods in socially acceptable ways is limited or  
18 uncertain". Supporting local agriculture through initiatives

1 like a farm-to-school program can serve to combat both of these  
2 problems.

3       Increasing the consumption of locally grown foods will  
4 ensure that fresh, high quality produce is available for healthy  
5 meals in schools, hospitals, and correctional facilities  
6 throughout the State. The increased revenue for local farmers  
7 will reverse the trend of farmers struggling to break even, and  
8 will place agriculture at the forefront as a driving economic  
9 force providing job creation and food security for our State.  
10 Furthermore, the availability of local produce will ensure our  
11 children eat the highest quality food that will nourish their  
12 bodies, enhance their educational experience, and cultivate  
13 long-term healthy habits.

14       The purpose of this Act is to amend section 103D-102,  
15 Hawaii Revised Statutes, to ease the process required for  
16 governmental bodies to acquire local agricultural commodities.

17       SECTION 2. Section 103D-102, Hawaii Revised Statutes, is  
18 amended by amending subsection (b) to read as follows:

19       "(b) Notwithstanding subsection (a), this chapter shall  
20 not apply to contracts by governmental bodies:

- 1           (1) Solicited or entered into before July 1, 1994, unless  
2           the parties agree to its application to a contract  
3           solicited or entered into prior to July 1, 1994;
- 4           (2) To disburse funds, irrespective of their source:
- 5           (A) For grants or subsidies as those terms are  
6           defined in section 42F-101, made by the State in  
7           accordance with standards provided by law as  
8           required by article VII, section 4, of the state  
9           constitution; or by the counties pursuant to  
10          their respective charters or ordinances;
- 11          (B) To make payments to or on behalf of public  
12          officers and employees for salaries, fringe  
13          benefits, professional fees, or reimbursements;
- 14          (C) To satisfy obligations that the State is required  
15          to pay by law, including paying fees, permanent  
16          settlements, subsidies, or other claims, making  
17          refunds, and returning funds held by the State as  
18          trustee, custodian, or bailee;
- 19          (D) For entitlement programs, including public  
20          assistance, unemployment, and workers'  
21          compensation programs, established by state or  
22          federal law;

- 1 (E) For dues and fees of organizations of which the  
2 State or its officers and employees are members,  
3 including the National Association of Governors,  
4 the National Association of State and County  
5 Governments, and the Multi-State Tax Commission;
- 6 (F) For deposit, investment, or safekeeping,  
7 including expenses related to their deposit,  
8 investment, or safekeeping;
- 9 (G) To governmental bodies of the State;
- 10 (H) As loans, under loan programs administered by a  
11 governmental body; and
- 12 (I) For contracts awarded in accordance with chapter  
13 103F;
- 14 (3) To procure goods, services, or construction from a  
15 governmental body other than the University of Hawaii  
16 bookstores, from the federal government, or from  
17 another state or its political subdivision;
- 18 (4) To procure the following goods or services which are  
19 available from multiple sources but for which  
20 procurement by competitive means is either not  
21 practicable or not advantageous to the State:

- 1 (A) Services of expert witnesses for potential and  
2 actual litigation of legal matters involving the  
3 State, its agencies, and its officers and  
4 employees, including administrative quasi-  
5 judicial proceedings;
- 6 (B) Works of art for museum or public display;
- 7 (C) Research and reference materials including books,  
8 maps, periodicals, and pamphlets, which are  
9 published in print, video, audio, magnetic, or  
10 electronic form;
- 11 (D) Meats and foodstuffs for the Kalaupapa  
12 settlement [7], and fresh meat and produce, and  
13 animals and plants for use by any governmental  
14 body;
- 15 (E) Opponents for athletic contests;
- 16 (F) Utility services whose rates or prices are fixed  
17 by regulatory processes or agencies;
- 18 (G) Performances, including entertainment, speeches,  
19 and cultural and artistic presentations;
- 20 (H) Goods and services for commercial resale by the  
21 State;

- 1 (I) Services of printers, rating agencies, support  
2 facilities, fiscal and paying agents, and  
3 registrars for the issuance and sale of the  
4 State's or counties' bonds;
- 5 (J) Services of attorneys employed or retained to  
6 advise, represent, or provide any other legal  
7 service to the State or any of its agencies, on  
8 matters arising under laws of another state or  
9 foreign country, or in an action brought in  
10 another state, federal, or foreign jurisdiction,  
11 when substantially all legal services are  
12 expected to be performed outside this State;
- 13 (K) Financing agreements under chapter 37D; and
- 14 (L) Any other goods or services which the policy  
15 board determines by rule or the chief procurement  
16 officer determines in writing is available from  
17 multiple sources but for which procurement by  
18 competitive means is either not practicable or  
19 not advantageous to the State; and
- 20 (5) Which are specific procurements expressly exempt from  
21 any or all of the requirements of this chapter by:

1 (A) References in state or federal law to provisions  
2 of this chapter or a section of this chapter, or  
3 references to a particular requirement of this  
4 chapter; and

5 (B) Trade agreements, including the Uruguay Round  
6 General Agreement on Tariffs and Trade (GATT)  
7 which require certain non-construction and non-  
8 software development procurements by the  
9 comptroller to be conducted in accordance with  
10 its terms."

11 SECTION 3. Section 103D-104.5, Hawaii Revised Statutes, is  
12 repealed.

13 [~~§103D-104.5~~ ~~Agricultural products subject to this~~  
14 ~~chapter.~~ ~~The following agricultural products shall be subject~~  
15 ~~to this chapter.~~

16 ~~(1) Fresh meats and produce; and~~

17 ~~(2) Animals and plants.~~

18 ~~Except for the exemptions under section 103D-102(b), no~~  
19 ~~exemptions under this chapter shall apply to this section."]~~

20 SECTION 4. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

S.B. NO. 991

1 SECTION 5. This Act, upon its approval, shall take effect  
2 on July 1, 2013.

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INTRODUCED BY: 

BY REQUEST



S.B. NO. 991

**Report Title:**

Procurement

**Description:**

Exempts the purchase of fresh meats and produce and animals and plants by any governmental body from the Hawaii Public Procurement Code.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Agriculture

TITLE: A BILL FOR AN ACT RELATING TO PROCUREMENT.

PURPOSE: To exempt the purchase of fresh meats and produce and animals and plants by any governmental body from the Hawaii Public Procurement Code.

MEANS: Amend section 103D-102(b) and repeal section 103D-104.5, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Act 175, Session Laws of Hawaii 2009, added section 103D-104.5, HRS, which explicitly subjects the purchase of fresh meat and produce and animals and plants to the Procurement Code. Purchase of fresh meat and produce and animals and plants by governmental agencies has been problematic with agencies having to issue solicitations for these volatile items due to market pricing and availability. This requirement to competitively procure these items has not proven an efficient process for agencies.

Exempting these purchases from the Procurement Code will allow agencies to more efficiently purchase these items that are highly perishable, vary in availability, quality, and quantity, and to acquire these items from best available sources on an as needed basis.

Impact on the public: Expediting the processes to obtain needed goods will allow for more procurement of local agricultural commodities. This will provide a more healthful option as local products will have had less time from farm to market and increase our level of food security.

Impact on the department and other agencies: This bill will simplify and expedite the processes to obtain the required goods in a

**SB. NO. 991**

timely manner.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: AGS 240 State Procurement.

OTHER AFFECTED  
AGENCIES: All governmental agencies, including chief  
procurement officers and heads of  
governmental bodies.

EFFECTIVE DATE: July 1, 2013.